OCTOBER TERM, 1969

Supreme Court of the United States

THE PEOPLE OF THE STATE OF CALIFORNIA,
PETITIONER

v.

JONATHAN TODD BYERS, RESPONDENT

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

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In the Supreme Court
of the State of California

No. S. F. 22634

Jonathan Todd Byers,
Plaintiff and Respondent,

v.

The Justice Court for the Ukiah Judicial District of Mendocino County,
Defendant and Respondent;

The People,
Real Party in Interest and Appellant.

RELEVANT DOCKET ENTRIES

November 4, 1968—Petition for Hearing filed by The People
November 6, 1968—Petition for Hearing filed by the respondent Byers
November 20, 1968—Hearing granted
February 3, 1968—Cause called and argued
September 16, 1969—Cause submitted and judgment of Superior Court affirmed
October 1, 1969—Petition for Rehearing filed by the People
October 15, 1969—Rehearing denied
October 17, 1969—Remittitur issued

1/Civil No. 24557

In the Court of Appeal of the State of California
First Appellate District, Division Three

Jonathan Todd Byers,
Plaintiff and Respondent,
v.
The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Defendant and Respondent;
The People of the State of California,
Real Party in Interest and Appellant.

RELEVANT DOCKET ENTRIES

May 4, 1967—Clerk's Transcript on Appeal filed
August 16, 1967—Opening brief filed by The People
March 5, 1968—Respondent's brief filed by respondent Byers
March 25, 1968—Reply brief filed by The People
July 19, 1968—Cause called, argued and submitted
September 23, 1968—Judgment of Superior Court granting the writ of prohibition is reversed
October 8, 1968—Petition for rehearing and/or modification filed by The People
October 23, 1968—Rehearing and/or modification denied

The Superior Court of the State of California
County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

v.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

RELEVANT DOCKET ENTRIES

January 13, 1967—Petition for Writ of Prohibition and Points and Authorities in Support filed by respondent Byers; alternative Writ of Prohibition issued by court

January 20, 1967—Demurrer to Petition for Writ of Prohibition and Points and Authorities in Support of Demurrer and in Opposition to Granting the Peremptory Writ of Prohibition filed by The People

January 27, 1967—Petition and Demurrer argued and submitted

February 17, 1967—Writ of Prohibition issued and Memorandum Opinion filed

February 24, 1967—Order overruling Demurrer filed by court

March 21, 1967—Findings of Fact and Conclusions of Law filed; Permanent Writ of Prohibition issued and Judgment Granting Permanent Writ of Prohibition filed

March 22, 1967—Notice of Appeal filed

In the Justice Court for the Ukiah Judicial District
County of Mendocino, State of California

No. A 40692

The People of the State of California,
Plaintiff,

v.

Jonathan Todd Byers,
Defendant.

RELEVANT DOCKET ENTRIES

August 22, 1966—Criminal complaint filed

September 8, 1966—Demurrer and Points and Authorities filed

December 7, 1966—Demurrer overruled

S. F. 22634

District Court of Appeal
State of California
First Appellate District

1 Civ. 24557
Endorsed-Filed Apr 18 1967
Viola N. Richardson, County Clerk

Appeal from
The Superior Court of the State of California
County of Mendocino
Honorable Robert L. Winslow, Judge

Filed May 4, 1967
Court of Appeal, First App. Dist.
Lawrence R. Elkington, Clerk
By .....
Deputy

Jonathan Todd Byers
Plaintiff and Respondent
vs
The Justice Court for the
Ukiah Judicial District, etc.
Defendants and Respondent.
People of the State of California
Real Party In Interest and Appellant.

DCA
NO.....

Appearances:

For the Petitioner:

Rawles, Nelson, Golden & Poulos
Attorneys at Law
P.O. Box 720
Ukiah, California 95482

For the Respondent: (Appellant):

Arthur B. Broaddus, District Attorney
P.O. Box 185
Ukiah, California 95482

Filed Jan 13, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
For the County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

vs.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

PETITION FOR WRIT OF PROHIBITION

Petitioner respectfully shows:

I

On or about August 22, 1966, a criminal complaint was issued and docketed in the Justice Court, for the Ukiah Judicial District, County of Mendocino, State of California, charging your petitioner with a violation of Section 21750 and Section 20002 Subdivision (a) of the Vehicle Code of the State of California. Said complaint was docketed in Volume 91, Page 186 of the records of the said Court and was assigned Case No. A40692. A true copy of said complaint is attached hereto marked Exhibit A and is hereby referred to and made a part hereof as fully as though herein set forth at length.

II

Petitioner was duly arrested on said charges contained in said complaint and held in the custody of the Sheriff of the County of Mendocino, State of California. Thereafter,

and pursuant to petitioner's request, the Honorable Hale McCowan, Jr., Judge of the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, released petitioner upon his own recognizance from the custody of the Sheriff of the County of Mendocino, and petitioner is now free of his own recognizance. [2*]

III

Petitioner was duly arraigned in the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, and petitioner, within the time provided by law, filed his written demurrer to the complaint and the charges set forth therein urging that Vehicle Code Section 20002, Subdivision (a) was unconstitutional both upon its face and as applied to petitioner in Count II of said complaint. A true copy of said demurrer is attached hereto marked Exhibit B and is hereby referred to and made a part hereof as fully as though herein set forth at length.

IV

After filing said demurrer, the same was argued before the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, and at said hearing it was stipulated by and between Timothy Stoen, Esq., Deputy District Attorney and John W. Poulos, Esq., attorney for petitioner, and so ordered by said Court that said complaint be amended upon its face to add the allegation that offenses charged in Count I and Count II of said complaint were the same class of offenses and connected together in their commission.

V

After said hearing the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, took said matter under advisement and on or about De-

*Brackets indicate page numbering of Clerk's Transcript on Appeal and follow page materials set forth.

cember 7, 1966, the Court overruled said demurrer and set the date for [3] the arraignment of petitioner for the purposes of entering a plea upon said complaint for December 9, 1966. At the request of your petitioner said Justice Court continued said arraignment until Friday, January 13, 1967, at the hour of 11 o'clock A. M. for the purpose of arraigning the petitioner for the entrance of a plea upon the charges contained in said complaint.

VI

The said Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, is wholly without jurisdiction to proceed to arraign and try the petitioner for an alleged violation of Section 20002 Subdivision (a) of the Vehicle Code of the State of California, in that under the facts of this case, and as above alleged, when the complaint charges two offenses connected together in their commission, said Section 20002 Subdivision (a) requires the petitioner to give evidence against himself and destroys his right to remain silent, contrary to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section XIII of the California Constitution.

VII

Unless restrained and prohibited by Order of this Court, the said Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, threatens to, intends to, and will require your petitioner to enter a plea upon the charges contained in Count II of said complaint and pass upon, hear and try said charges. [4]

VIII

Your petitioner has no plain, speedy, and adequate remedy in the ordinary course of law. The remedy by appeal from any judgment which might be rendered in the action

herein referred to, now pending in the Justice Court for the Ukiah Judicial District, County of Mendocino, Staate of California, is in no wise adequate and speedy for the reason that the personal hardship to be suffered by your petitioner is much greater than in a civil case and there is a strong public interest in avoiding the waste of time and expense of a futile trial and appeal, and in securing a prompt determination of the constitutionality of Section 20002, Subdivision (a) of the Vehicle Code of the State of California, as applied to petitioner in this case.

IX

Your petitioner is the party having beneficial interest in this proceeding and the names of the parties interested who will be affected by this petition are your petitioner, the respondent Court and the People of the State of California.

X

No prior application for the Writ sought by this petition or any other Writ pertaining to this matter, has been made by your petitioner.

XI.

The issuance of an Alternate Writ of Prohibition ex parte, without notice or service, will not in any way prejudice [5] any rights of the People of the State of California, but, on the contrary, will protect and preserve the rights of all parties beneficially interested and will further the cause of justice.

WHEREFORE, petitioner prays that an Alternative Writ of Prohibition restraining respondent Court from further proceedings on Count II of the complaint in the case of the People of the State of California vs. Jonathan Todd Byers, Case No. A40692, now pending in the Justice Court for the Ukiah Judicial District, County of Mendo-

cino, State of California, until further Order of this Court issue immediately; that this Court enter its Order dispensing with the requirements of notice and service; that the Clerk of this Court be ordered to accept this petition for filing; and that respondent and the People of the State of California be ordered to appear before this Court at a date and time set by this Court, then and there to show cause why a peremptory Writ of Prohibition should not issue herein.

Dated: January 12, 1967.

RAWLES, NELSON, GOLDEN & POULOS
By /s/ JOHN W. POULOS

I hereby declare under penalty of perjury that I am the petitioner in the above-entitled action; that I have read the foregoing Petition for Writ of Prohibition and know the [6] contents thereof, and that the same is true of my own knowledge except as to the matters which are therein stated upon my information and belief, and as to those matters I believe it to be true.

Executed by me this 12th day of January 1967, at Ukiah, California.

s/ JONATHAN TODD BYERS
Jonathan Todd Byers [7]

EXHIBIT "A"

In the Justice Court for the Ukiah Judicial District
County of Mendocino, State of California

Docket #91 Page 186
Case No. 91-6-A40692

The People of The State of California,
Plaintiff,

vs.

Jonathan Todd Byers,
Defendant.

COMPLAINT—CRIMINAL
(MISDEMEANOR)
COUNT ONE

The undersigned, first being duly sworn, on information and belief, complains and says:
That said defendant... did in the Ukiah Judicial District, County of Mendocino, State of California, on or about the 20th day of August, 1966, commit the crime of MISDEMEANOR, to-wit, violation of Section 21750 of the Vehicle Code of the State of California, in that said defendant... did then and there while overtaking another vehicle proceeding in the same direction, fail to pass to the left at a safe distance as required by said Section of the Vehicle Code.

COUNT TWO

The undersigned, being further sworn, says upon information and belief, that said defendant did in the Ukiah

Judicial District, County of Mendocino, State of California, on or about the 20th day of August, 1966, commit the crime of MISDEMEANOR, to-wit, violation of Subdivision (a) of Section 20002 of the Vehicle Code of the State of California, in that [8] said defendant being then and there the driver of a vehicle involved in an accident resulting in injury to property did fail to immediately stop such vehicle at the scene of the accident, did fail to locate and notify the owner or person in charge of such property of the name and address of the driver and owner of the vehicle involved, did fail to leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and did without necessary delay, fail to notify the local headquarters of the Department of the California Highway Patrol.

Aug. 29, 1966
10:00

Complainant therefore prays that a Warrant issue and that said defendant... be dealt with according to law.

Subscribed and sworn to before me this 22nd day of August, 1966.

s/ Roy L. Burton
s/ Hale McCowen, Jr. (SEAL)
Magistrate [9]

EXHIBIT "B"

In the Justice Court for the Ukiah Judicial District
County of Mendocino, State of California

No. A 40692

The People of The State of California,
Plaintiff,

vs.

Jonathan Todd Byers,
Defendant.

DEMURRER AND MEMORANDUM OF POINTS AND AUTHORITIES

The defendant in this action demurs to County Two of the complaint and the complaint upon the following grounds:

I

The complaint charges more than one offense contrary to the provisions of Section 954 of the Penal Code, in that the offenses charged in Counts One and Two are not of the same class.

II

The complaint charges more than one offense contrary to the provisions of Section 954 of the Penal Code, in that it does not appear that the offenses charged in Counts One and Two were connected together in their commission.

III

The complaint charges more than one offense contrary to the provisions of Section 954 of the Penal Code, in that it

does not appear that they charge the same offense differently stated.

IV

The facts stated in Count Two of the complaint does [10] not constitute a public offense because to require the defendant who was a driver involved in an accident resulting in injury to property to immediately stop the vehicle he has driving at the scene of the accident, locate and notify the owner or person in charge of said property of the name and address of the driver and owner of the vehicle involved and leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of circumstances thereof, and to require without necessary delay notification of the local headquarters of the Department of the California Highway Patrol when the defendant is also charged with another offense arising out of the same accident requires the defendant to give evidence against himself contrary to the Fifth and Fourteenth Amendments to the United States Constitution and Article I Section XIII of the California Constitution.

Dated: September 8, 1966

RAWLES, NELSON & GOLDEN
By *Attorneys for Defendant*

MEMORANDUM OF POINTS AND AUTHORITIES

I

The exception from compulsory self-incrimination created by the Fifth Amendment to the United States Constitu-

tion is protected by the Fourteenth Amendment against abridgment by [11] the States.

Malloy v. Hogan, 84 S.Ct. 1489 at 1493 (1964)

II

The privilege against self-incrimination is fulfilled only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will.

Malloy v. Hogan, supra; *Escobedo v. State of Illinois,* 84 S.Ct. 1758 (1964); *Miranda v. State of Arizona,* 86 S.Ct. 1602 (1968); *People v. Dorado,* 42 Cal. Reptr. 169 at 179.

III

"We turn to the petitioner's claim that the State of Connecticut denied him the protection of his federal privilege. We recently elaborated the content of the federal standard in Hoffman:

"The privilege afforded not only extends to answers that would in themselves support a conviction * * * but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute. * * * (I)f the witness, upon interposing his claim, were required to prove the hazard * * * he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could [12] result." 341 U.S., at 486-487, 71 S.Ct. at 818."

Malloy v. Hogan, 84 S.Ct. 1489 at 1495 and 1496 (1964)

IV

Section 2002 of the Vehicle Code (as it read in 1964) has been held to violate the Fifth and Fourteenth Amendments to the United States Constitution where the defendant is charged with another offense resulting from the accident in question.

People v. Mitchell, Superior Court of the State of California for the County of Mendocino, Case No. 3948-C.

Dated: September 8, 1966

Respectfully submitted,
RAWLES, NELSON & GOLDEN
By..... [13]

Filed: Jan 13 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

(Title omitted)

ALTERNATIVE WRIT OF PROHIBITION

The People of the State of California to respondent Justice Court for the Ukiah Judicial District, County of Mendocino, State of California:

WHEREAS, the verified petition of JONATHAN TODD BYERS shows that you, the respondent are proceeding to arraign and try the petitioner for an alleged violation of Section 20002, Subdivision (a) of the Vehicle Code of the State of California, allegedly without jurisdiction to do so; and

WHEREAS, the said verified petition shows that petitioner has no plain, speedy and adequate remedy at law, and that an alternative Writ of Prohibition should issue;

THEREFORE, you are commanded to desist and refrain from arraigning the petitioner for the entrance of a plea to Count II and from trying and taking any further proceedings whatsoever in connection with said Count II of the complaint now pending in the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, which said complaint is docketed in Volume 91, Page 186 of the records of said Court and assigned Case No. A40692, until further order of this Court, and to show cause, if any you have, before this Court at 8:30 A. M. on January 27, 1967, in Department 1 of the above entitled

Court in the Mendocino County Court- [14] house, Ukiah, County of Mendocino, State of California, or as soon thereafter as the matter can be heard, why you should not be absolutely restrained from arraigning the defendant for the purposes of entering a plea upon Count II and from trying and taking any further proceedings upon said Count II contained in that complaint docketed in Volume 91, Page 186 of the records of said Court and assigned Case No. A40692.

• • • •

Dated: January 13, 1967.

s/ ROBERT L. WINSLOW
Judge of the Superior Court [15]

(Declaration of Service Omitted in Printing)

Filed: Jan 13 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

(Title omitted)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

Petitioner submits the following points and authorities in support of his petition for writ of prohibition

I

A writ of prohibition may issue on the verified petition of the person beneficially interested to arrest the proceedings of an inferior tribunal exercising judicial functions when such proceedings are without, or in excess of, the jurisdiction of such tribunal and there is no plain, speedy, and adequate remedy in the ordinary course of law.

Code of Civil Procedure, Section 1102
Code of Civil Procedure, Section 1103

II

When the claimed constitutional infirmity appears on the face of the statute upon which a persecution is based, prohibition is an appropriate means to challenge the constitutionality of the statute in question.

Canon vs. Justice Court (1964) 61 Cal. 2d 446; 39 Cal. Rptr. 228

Rescue Army vs. Municipal Court (1962) 28 Cal. 2d 460

Moore vs. Municipal Court 170 Cal. App. 2d, 548

Lambert vs. Municipal Court 53 Cal. 2d 690; 3 Cal. Rptr. 168 [16]

III

Prohibition is the appropriate remedy to determine whether or not a statute is being unconstitutionally applied in any given case when the remedy of appeal is inadequate.

Patterson vs. Muncipal Court 232 Cal. App. 2d 289; 42 Cal. Rptr. 769

IV

". . . Moreover, criminal cases tried in municipal courts get special consideration; Tobriner, J., summarized the inadequacy of other remedies in these cases in Moore v. Municipal Court (1959) 170 Cal. App. 2d 548, 552, 339 P.2d 196, 198: 'The most recent cases recognize that the requirement that a defendant in a criminal case stand trial by a court which acts without or in excess of its jurisdiction is an imposition of personal hardship upon the defendant and a futile expense to the public * * The burden becomes particularly acute in a situation in which the defendant must appeal to the appellate department of the superior court and he has no remedy of certiorari' ".

Patterson vs. Municipal Court, supra 232 Cal. App. 2d 289; 42 Cal. Rptr. 769 at 771

V

The privilege from compulsory self-incrimination created by the Fifth Amendment to the United States Constitution is protected by the Fourteenth Amendment against abridgment by the States. [17]

Malloy vs. Hogan (1964) 84 S.Ct. 1489 at 1493.

VI

A State must apply Federal standards to determine whether or not the requirements of the Fifth and Fourteenth Amendments are being met.

Malloy vs. Hogan, supra 84 S.Ct. 1489 at 1493

VII

The privilege against self-incrimination is fulfilled only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will.

Malloy vs. Hogan, supra 84 S.Ct. 1489 at 1493
Escobedo vs. State of Illinois (1964) 84 S.Ct. 1758
Miranda vs. State of Arizona (1966) 86 S.Ct. 1602
People vs. Dorado 42 Cal. Rptr. 169 at 179

VIII

"We turn to the petitioner's claim that the State of Connecticut denied him the protection of his federal privilege ... We recently elaborated the content of the federal standard in Hoffman:

"The privilege afforded not only extends to answers that would in themselves support a conviction * * * but like- [18] wise embraces those which would furnish a link in the chain of evidence needed to prosecute. * * * (I)f the witness, upon interposing his claim, were required to prove the hazard * * * he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." 341 U.S., at 486-487, 71 S.Ct. at 818."

Malloy vs. Hogan, supra (1964) 84 S.Ct. 1489 at 1495 and 1496

The Fifth Amendment privilege against self-incrimination does not apply simply to judicial proceedings, but ren-

ders unconstitutional a statute which requires the abridgment of that privilege.

Albertson vs. Subversive Activities Control Board
382 U.S. 70, 86 S.Ct. 194, 15 L.Ed. 2d 165

X

"Section 4(f) of the Act, the purported immunity provision, does not save the registration orders from petitioners' Fifth Amendment challenge. In Counselman v. Hitchcock, 142 US 547, 35 L ed 1110, 12 S Ct 195, decided in 1892, the Court held 'That no (immunity) statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privi- [19] lege . . .,' and that such a statute is valid only if it supplies 'a complete protection from all the perils against which the constitutional prohibition was designed to guard . . . .' by affording 'absolute immunity against future prosecution for the offense to which the question relates.' Id., at 585-586, 35 L ed at 112. Measured by these standards, the immunity granted by Sec. 4 (f) is not complete. See Scales v United States, 367 US at 206-219, 6 L ed 2d at 788-795. It does not preclude any use of the information called for by Form IS-52, either as evidence or as an investigatory lead. With regard to the act of registering on Form IS-52a, Sec. 4(f) provides only that the admission of Party membership thus required shall not per se constitute a violation of Secs. 4 (a) and (c) or any other criminal statute, or 'be received in evidence' against a registrant in any criminal prosecution; it does not preclude the use of the admission as an investigatory lead, a use which is barred by the privilege. Counselman v Hitchcock, 142 US, at 564-565, 35 L ed at 1114, 1122."

Albertson vs. Subversive Activities Control Board, sup 382 US 70, 86 S.Ct. 194, 15 L ed 2d 165 at 172

XI

"The words, 'No person shall . . . be compelled, in any criminal case, to be a witness against himself' mean that no person shall be compelled to make any statement, orally or in writing, anywhere or at any time, which may be made use of against him in any criminal prosecution, then pending or which might thereafter be brought against him. With almost complete [20] unanimity the cases find in the words more than is literally there. The prosecution afforded includes but goes beyond the assurance to a defendant on trial in a criminal case that he will not be compelled to testify against himself. The protection intended applies even before the commencement of a criminal case and secures one who may reasonably be expected to be a defendant from furnishing amunition to be used against him."

People vs. McCormick (1951) 102 Cal. App. 2d Supp. 954 at 957; 228 P.2d 349

XII

An ordinance may not abridge the privilege against self-incrimination contained in the California Constitution, Article I, Section XIII and that privilege does not extend simply to jurisdictional proceedings, but applies equally to a statutory interference.

People vs. McCormick, supra (102 Cal. App. 2d Supp. 954

XIII

Section 20002 of the Vehicle Code (as it read in 1964) has been held to violate the Fifth and Fourteenth Amendments to the United States Constitution where the defendant is charged wih another offense resulting from the accident in question.

People vs. Mitchell, Superior Court of the State of California for the County of Mendocino, Case No. 3948-C.

Dated: January 13, 1967.

Respectfully submitted,
RAWLES, NELSON, GOLDEN & POULOS
By s/ John Poulos [21]

Filed: Jan 20, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

(Title omitted)

DEMURRER

Comes now the Respondent and demurs to the Petition on file herein on the grounds that the Petition for Writ of Prohibition fails to state facts sufficient to constitute a cause of action.

Dated: January 19, 1967.

ARTHUR B. BROADDUS
District Attorney
By s/ THOMAS B. SAWYER
Thomas B. Sawyer
Deputy District Attorney
Attorney for Respondent [32]

Filed: January 20, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

(Title omitted)

POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER AND IN OPPOSITION TO GRANTING THE PEREMPTORY WRIT OF PROHIBITION

1.

The respondent may demur to a petition which is insufficient as a matter of law.

Faulkner v. Cal. Toll Bridge Authority (1953) 40 Cal. 2d 317; 364 P.2d 659.

2.

The petition alleges that Section 2002(a) of the Vehicle Code is unconstitutional as in violation of the state and federal constitutional provisions against self-incrimination. The petition contains all the essential facts of the record below and presents the constitutional question only. If the Vehcile Code is constitutional, then the petition must fail.

It is submitted that the Vehicle Code is constitutional on two grounds, first on the grounds that the privilege against self-incrimination does not apply to the information requested in the "hit and run" situation and secondly, driving a vehicle on a public highway constitutes a waiver of the constitutional right to the extent here involved.

2A.

The privilege against self-incrimination is not applicable. Section 20002(a) as here involved reads as follows: [22]

"The driver of any vehicle involved in an accident resulting in damage to any property . . . shall . . .

(2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol."

The requirement here does not require admission of a crime. It is equally applicable whether the driver is at fault or is wholly innocent of crime or civil fault. All statutes are to be construed to be constitutional if possible.

In re Thevenins' Adoption (1961) 189 CA2d 245; 11 Cal. Rptr. 219)

Accordingly, this statute can only mean that the driver is required to give only essential information. Requiring name and address and the fact that an accident had occurred, does not incriminate the driver, unless there were other circumstances not required to be reported. If a criminal case were pending and a "suspect" were under investigation, then the rule would apply as set forth in the *Miranda, Escobedo,* and *Dorado* cases. The rationale of those cases was to prevent police or other [23] officers of the government extracting information without advising the suspect of his rights. This role is recent as applied to State Courts, (see People v. Cahan, 202 P.2d 905) and was adopted as the only way to curb police abuses. In the Vehicle Code section, there is no problem of police brutality, or eavesdropping, or in-custody harrassment. None of the

dangers mentioned in the landmark cases is present. Were the driver is in fact innocent of negligence, civil wrong, or crime, there is privilege to protect.

Surely it would not be fair to say that a driver must leave his name when he is innocent, but not when he is at fault. This situation is not like the registration cases cited by petitioner.

A note in 3 Cal. Law Rev. 75 (1914) discusses a case holding valid a predecessor hit and run section as a constitutional regulation of highways.

People v. Diller, 24 CA 799; 142 P. 797

The claim was raised of self-incrimination in violation of Section 13, Article 1 of the Constitution of California. Similar statutes have been upheld against this claim in *Mo-Ex parte Kneedly,* 243 Mo. 632, 147 SW 983. *People v. Rosenchimer,* 209 NY 115, 102 N.E. 530, NY, case held state could prohibit operation of auto altogether and, therefore, could attach such conditions as they saw fit. "The driver of an automobile in the operation thereof exercises a privilege and not a right and as to such privilege it is competent for [24] the Legislature to prescribe the conditions upon which it shall be exercised." This is approved by California decision in summarizing the Mo. and New York cases, *People v. Diller,* 142 P. 797, 798. The *Diller* case expressly refuses to decide the result where a crime was committed. "Since no crime was committed, the constitutional provision could have no application and in such case the constitutional rights of defendant could not be infringed. The Court adopts the Missouri Kneedler case as follows:

> "Requirement of identity is lawful. The law does not make the accident a crime."

Other examples: Chauffer and owner to register names and number and display number on vehicle for obvious purpose of identification,

Persons in charge of mines must report accidents.

Physicians show prescription lists.

Dealers must deliver for inspection foods carried in stock.

Pawnbrokers must show book of articles received by him.

"We are not aware of any constitutional provision designed to protect a man's conduct from judicial inquiry, or aid him in fleeing from justice." (Mo. case)

"There can be no question but that this act including Section 12, (requires stop and give name and address) is a reasonable exercise of [25] the police power. The petitioner does not contend otherwise." (Mo. case)

People v. McCormick (1951) 102 Cal. App. 2d Supp. 954; 228 P.2d 349, relates to the constitutionality of County ordinance requiring registration by members of so-called Communist organizations. The Court held the requirement a violation of the self-incrimination provisions of the State Constitution. The case is distinguishable from the Vehicle Code section because the membership in the organization is a link in a chain of evidence of violation of the Criminal Syndicalism Act, which has already taken place. The decision itself distinguishes the vehicle act.

"Nor is the ordinance a simple police power regulation requiring the identification of citizens. The requirement of section 482, Vehicle Code, that the driver of a vehicle involved in an accident shall give his name, address and the registration number of his vehicle,

does not necessarily implicate the driver in the commission of a crime, for an accident is not a crime, per se. The constitutionality of this and similar statutes is approved in People v. Diller, 1914, 24 Cal. App. 799, 142 P. 797. The ordinance we are considering does not come into operation, however, until a violation of the Criminal [26] Syndicalism Act has occurred, and only one who is violating that act is compelled to register and by registering furnish, quite likely, some of the clews needed to establish his guilt. No such statute as this is looked upon with favor in the Diller case."

Albertson v. Subversive Activities Control Bd., 382 US 70, 16 L.Ed. 2d 165 (1965) holds that the act requiring the Communist Party members to register violated the constitutional right to privilege against self-incrimination. Here again we are not dealing with a registration requirement generally, but only members of a "highly select group inherently suspect of criminal activities. Petitioners' claims are not asserted in an essentially regulatory inquiry, but against an inquiry in an area permeated with criminal statutes, where response to any of the form's questions in context might involve the petitioners in the admissiion of a criminal element of a crime." (156 Ed. P. 172).

The Court held the requirement that all persons file an income tax return was readily distinguishable as valid, citing the income tax case, *U. S. v. Sullivan,* 274 US 259, 7, L.Ed. 1037.

The Escobedo cases (Escobedo v. Ill., 84 S.Ct. 1758, *Miranda v. Arizona,* 86 S.Ct. 1802, *People v. Dorado,* 42 Cal. Rep. 169) do not purport to affect the constitutionality of hit and run statutes. These cases are all concerned with pro-

tecting [27] the right of a person accused, or suspected of an offense from interrogation by police or similar officers. The emphasis is on the atmosphere surrounding the suspect and the need for protection. The *Miranda* case, particularly, shows that this is the area of concern as the following quotations show. *Miranda v. Arizona,* supra, holds that "the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."

> "From the foregoing (discussion of interrogation practices) we can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning. It is fitting to turn to history and precedent underlying the self-incrimination clause to determine its applicability in this situation." (1 6 L.Ed. 2d, p. 714)
>
> The privilege is a
>
> "Right to a private enclave where he may lead a private life. That right is the hallmark of our democracy." *U.S. v. Grunewald,* 233 F.2d 556, reviewed 353 U.S. 391. 1 L.Ed. 2d, 931, P. 715.
>
> "The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation.". 715. [28]

Malloy v. Hogan, 378 U.S. 1, 12 L.Ed. 2d, 653, 84 S.Ct. 1489 (1964) "necessitates an examination of the scope of the privilege in state cases as well." p. 717

> "The volitariness doctrine in the state cases, as Malloy indicates, encompasses all interrogation practices which are likely to exert such pressure upon an

individual as to disable him from making a free and rational choice." p. 717

"The entire thrust of police interrogation there, (Escobedo) as in all the cases today, was to put the defendant in such an emotional state as to impair his capacity for rational judgment." p. 718

"General on the scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact finding process is not affected by our holding . . . . In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present. p. 725

In summary, the Vehicle Code Section does not violate the privilege against self-incrimination granted by the State and Federal Constitutions. The case law has extended the privilege from the courtroom to include detention and predetention interrogation, and to registration as a member of a [29] criminal society. Thus far it has not been extended to situations requiring giving information such as filing income tax returns, reporting on employment, business activities, etc.

We submit that under the general police power the State may make reasonable regulations of the non-criminal activities of its citizens, and as a concomitant thereof, require persons to supply information. The operation of a motor vehicle upon a highway is a dangerous activity and requires for the safety of users, reasonable regulations. The State may forbid the activity altogether and hence may require as a condition of the exercise of the privilege to use the highways of this State the reasonable requirement that persons involved in accidents comply with Section 20002(a)

of the Vehicle Code. The requirement applies alike to those who are innocent as to those who are guilty. The problem of protecting the person from police brutality, psychological pressure, trickery is not involved. The person's right to dignity and privacy is not infringed.

No person has a right to a "private enclave" in the traffic lane of a busy freeway. The operation of a dangerous instrumentality which in fact kills more citizens each year on our highways than are lost in warfare, requires reasonable regulations of the operator. This regulation has been affirmed as constitutional since the early days of the use of the automobile.

We request the writ be denied. [30]

Respectfully sumitted,

ARTHUR B. BROADDUS
District Attorney
By s/ THOMAS B. SAWYER
Thomas B. Sawyer
Deputy District Attorney
Attorney for Respondent [31]

MINUTES AND ORDERS, SUPERIOR COURT.
DEPARTMENT No. 1, Vol. 34, page 275

January 27, 1967

Hon. Robert L. Winslow, presiding
Clerk: Myrtle Turner
Reporter: Waldo Munday
Bailiff: Ken Stewart

This action came on the petition for writ of prohibition, John Poulos appearing for plaintiff and Tom Sawyer, Dep. D. A., appearing for defendant. Petition argued and submitted. Demurrer argued and submitted.

DEPARTMENT No. 1, Vol. 34, page 285

February 17, 1967

Hon. Robert L. Winslow, presiding
Clerk: Myrtle Turner
Reporter: Waldo Munday
Bailiff: Richard Phelps

The Court: The writ of prohibition sought by petitioner should be issued as prayed for. [33]

Filed: Feb. 17, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

(Title omitted)

MEMORANDUM OPINION

Petitioner Jonathan Todd Byers seeks a writ of prohibition to prevent the Justice Court of the Ukiah Judicial District from proceeding with a prosecution charging a violation of Vehicle Code Section 20002 (The hit-run Statute). The complaint involved consists of two counts, the first of which charges a violation of Vehicle Code Section 21750, and which alleges that the defendant "did then and there while overtaking another vehicle proceeding in the same direction fail to pass to the left at a safe distance as required by said section of the Vehicle Code."

At oral argument it was stipulated that the alleged violation of Vehicle Code Section 21750 resulted in an impact between the vehicle driven by the defendant and another vehicle and that the damage from this impact was the damage referred to in Count 2 of the complaint, where it is charged that the defendant "being then and there the driver of a vehicle involved in an accident resulting in injury to property did fail to immediately stop such vehicle at the scene of the accident, did fail to locate and notify the owner or person in charge of such property of the name and address of the driver and owner of the vehicle involved, did fail to leave in a conspicuous place on the vehicle, or other [34] property damaged, a written notice giving the name and address of the driver and of the owner

e vehicle involved and a statement of the circum-
s thereof, and did without necessary delay fail to
the local headquarters of the Department of the
rnia Highway Patrol."

ilure to comply with Vehicle Code Section 20002 con-
s a misdemeanor, which is subject to punishment by
onment in the County Jail for not to exceed six
s or by a fine of not to exceed $500.00 or by both.
ant to the provisions of Section 42001 a violation of
e Code Section 21750 is subject to the possibility of
ne and imprisonment and constitutes a misdemeanor.
uestion for decision in this case is whether a defend-
o is charged with a crime which is alleged to have
property damage to another can also be charged
nother crime for not identifying himself and other-
mplying with the provisions of Section 20002, though
ompliance would obviously provide evidence which
be used against him in the prosecution for a viola-
Section 21750 of the Vehicle Code. As will hereafter
, the Court has concluded the Section 20002 of the
e Code cannot be constitutionally applied in this
on. Such an application of Section 20002 of the
e Code violates the 5th Amendment's privilege not
riminate oneself. The Court's reasons for this con-
follow.

nalyzing this problem we start with the fact [35]
ne hit-run statutes have been held constitutional in
rnia in the case of People vs. Dillard, 24 Cal. App.
nd People vs. Fardera, 33 Cal. App. 8. At the time
cases were decided the provisions of the United
Constitution set forth in the 5th Amendment were
plicable to the states by reason of the holding in

Twining vs. New Jersey, 211 U. S. 78, 53 L. Ed. 97, 29 S.Ct. 14; Adamson vs. California, 332 U. S. 46, 97 S. Ed. 1903, 67 S.Ct. 1672.

Since the Dillard and Fardera cases the United States Supreme Court has over-ruled the Twining and Adamson cases in Malloy vs. Hogan, 12 Lawyers Edition 2nd 653, decided June 15, 1964. The Malloy case constitutes a clear, unequivocal holding that the privilege against self incrimination set forth in the 5th Amendment applies to the states and that the state courts must recognize the 5th Amendment and apply Federal standards in interpreting that amendment. In view of Malloy, it is now obviously necessary to reanalyze the hit-run situation and determine its constitutionality based upon current Federal law. Before examining the Federal cases it should be noted that most state courts have upheld hit-run statutes against the claim that they are self-incriminating. It should also be noted that these state court cases all predate Malloy vs. Hogan. These cases have, therefore, been interpreting their own constitutional provisions by their [36] own standards and not by Federal standards. The court in Malloy vs. Hogan, supra, stated:

> "The 14th Amendment secures against state invasion the same privilege that the 5th Amendment guarantees against Federal infringement—the right of a person to remain silent unless he chooses to speak in the exercise of his own will and to suffer no penalty for said silence."

The United States Supreme Court in Malloy vs. Hogan cites with approval Hoffman vs. United States, 341 U. S. 179, 95 L. Ed. 1118, 71 S. Ct. 814:

"The privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute . . . If the witness, upon interposing his claim, were required to prove the hazard . . . he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosures could result."

The Malloy Court went on as follows: [37]

"We also said that in applying that test the judge must be 'perfectly clear', from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer cannot possibly have such tendency to incriminate."

The Malloy Court characterized their holding as a return to principles enunciated in the case of Boyd vs. The United States, 116 U. S. 616, 29 L. Ed. 746. The Boyd Court held unconstitutional an act authorizing a court of the United States in revenue cases to require the defendant to produce his books and records in court where upon his failure to do so the allegations of the attorney for the People in support of a motion for the production of the books would be considered as confessed. The court in holding the statute unconstitutional said:

"Now it is elementary knowledge that one cardinal rule of the Court of Chancery is never to decree a

discovery which might tend to convict the party of a crime . . . and a compulsory discovery by exacting the party's oath or compelling the production of his private books and papers to convict him of crime, or to forfeit his property, is contrary to the principles of free government."

The court continued:

"Constitutional provisions for the security of persons and property should be liberally construed. A close and literal construction deprives [38] them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more of sound than in substance. It is the duty of the court to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."

In Counselman vs. Hitchcock, 35 Lawyers Edition 1110 (1892) the Court stated:

"It is impossible that the meaning of the constitutional provision can only be that a person shall not be compelled to be a witness against himself in a criminal proceeding against himself. It would doubtless cover such cases; but it is not limited to them. The object was to insure that a person should not be compelled to acting as a witness in any investigation that would give testimony which might tend to show that he himself committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard."

The Court continued:

"In June, 1807, Chief Justice Marshall, in the Circuit Court of the United States for the District of

Virginia, in Burr's trial (1 Burr's Trial 244), on the question whether the witness was privileged not to accuse himself, said: 'If the [39] question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath, that his answer would criminate himself, the Court can demand no other testimony of the fact . . . According to their statement' (The counsel for the United States) 'a witness can never refuse to answer any question, unless that answer unconnected with other testimony would be sufficient to convict him of crime. This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself; and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed [40] within his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself, would most obviously be infringed by compelling a witness to disclose a fact of

this description. What testimony may be possessed, o
is obtainable, against any individual, the Court ca
never know. It would seem, then, that the Court ough
never to compel a witness to give an answer which dis
closes a fact that would form a necessary and essen
tial part of a crime which is punishable by the laws.

It is hard to imagine a more damaging link in the chai
in a prosecution under Vehicle Code Section 21750 tha
that which establishes that the defendant was driving th
vehicle involved. Yet this is the very information whic
the defendant is compelled to divulge under penalty o
being charged with a violation of Vehicle Code Sectio
20002.

The District Attorney has urged that "the State ma
forebid the activity altogether and, hence, may require a
a condition of the exercise of the privilege to use the high
ways of this State the reasonable requirement that perso
involved in accidents comply with Section 20002, Subdiv
sion A, of the Vehicle Code. This argument is answered b
the recent opinion in Bagley vs. Washinigton Townshi
Hospital District 65 A.C. 540.

> "Since no provision of constitutional or statuto
> law purports to give plaintiff a right to secure or [4
> retain employment by the Board, defendant urges tha
> his right to terminate her employment knows no leg
> limit.
>
> "Despite the antiquity of this argument, its reaso
> ing today stands utterly discredited. Although an i
> dividual can claim no constitutional right to obta
> public employment or to receive any other public
> conferred benefit (the use of the highways) the go

ernment cannot condition admission to such employment or receipt of such benefits upon any terms that it may choose to impose. As Professor Thomas Reed Powell long ago observed, 'Logically a thing which may be absolutely excluded is not the same as a thing which may be subjected to burdens of a different kind, even though such burdens would be regarded by all as less onerous than the burden of absolute exclusion. The 'power of absolute exclusion' is a term not identical with the 'power of relative exclusion' or the 'power to impose any burdens whatsoever' "

(Powell, The Right to Work for the State (1961), 16 Columbia Law Review 99, 111.)

"Today courts and commentators alike recognize without question that the power of government, Federal or State, to withhold benefits from its citizens does not encompass a supposed "lesser" power to grant such benefits upon an arbitrary deprivation of constitutional right."

"The faulty logic inherent in defendant's [42] proffered syllogism was rejected by this Court in Danskin vs. San Diego Unified School District (1946), 28 Cal. 2d 536. That case involved a school district which had undertaken to confine the use of its buildings to organizations whose members gave a satisfactory account of their views. In the course of that opinion we declare:

'The State is under no duty to make school buildings available for public meetings (Citations). If it elects to do so, however, it cannot arbitrarily prevent any members of the public from holding such meetings. (Citations) Nor can it make the privilege of holding them dependent on conditions that would deprive any

members of the public of their constitutional rights. A State is without power to impose an unconstitutional requirement as a condition for granting a privilege, even though the privilege is the use of State property (Citations) ...'"

Subsequent to the Bagley case the United States Supreme Court also rejected this argument in an opinion filed January 16, 1967, in the case of Garrity vs. State of New Jersey. In that case the United States Supreme Court stated:

"There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price."

The Court thereafter indicates that the 14th Amendment prohibition against coerced confessions is such a right. [43] It is obvious, therefore, that a criminal culpability by reason of having been a driver of the vehicle involved under Count 1 of the Complaint in this case is enough of a risk that a confession made to avoid prosecution under Vehicle Code Section 20002 would not be admissible as being a coerced confession under the compulsion of the statute. It is clear, therefore, that the defendant had the right to not incriminate himself by acknowledging that he was the driver of the vehicle. In this connection see also Spevack vs. Klein, 35 L. W. 4140. Another interesting case is Hinchcliff vs. Clark, 230 F. Supp. 91, where the Court held that a taxpayer can refuse to supply information that would incriminate him. In United States vs. Silverstein, 314 Federal Reporter 789, 790, the Court held that an appearance before a Special Internal Revenue Agent is in the nature

of an appearance in a criminal investigation and that the claim of privilege against a summons directing production of an individual's papers was proper. If it is proper to withhold the information under the 5th Amendment privilege one can certainly not be prosecuted for so doing.

This Court has previously decided the problem before it in the case of People vs. James Mitchell, Mendocino County Action No. 3948-C. In that case the Court concluded that the provisions of Vehicle Code Section 20002 "cannot be constitutionally applied to the defendant under the circumstances of this case where he is charged with another offense resulting from the accident in question. It seems [44] clear that the statute attempts to require him to supply information which will complete the chain of circumstances necessary to convict him of the charge set forth in Count 1 of the Information. Even if we were to hold that the information supplied in compliance with those Vehicle Code sections could not be used in evidence against the defendant, the above cases indicate that this is not sufficient to preclude his assertion of the 5th Amendment. Any information supplied by him in compliance with those sections can certainly be used to develop other information, which could then be used to convict him of the charge set forth in Count 1. This is enough of a risk to authorize the defendant to assert the 5th Amendment and to, therefore, fail to comply with the provisions of Section 20002."

From the foregoing it follows that the Writ of Prohibition sought by the petitioner should be issued as prayed for.

Dated this 17th day of February, 1967.

s/ Robert L. Winslow
Judge [45]

Filed: February 24, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

vs.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

ORDER OVERRULING DEMURRER

The demurrer in the above entitled matter came on regularly to be heard in Department 1 of the above-entitled Court at 8:30 a.m. on January 27, 1967, RAWLES, NELSON, GOLDEN & POULOS, by JOHN W. POULOS, ESQ. appeared as attorney for Petitioner and ARTHUR B. BROADDUS, District Attorney, by THOMAS B. SAWYER, Deputy District Attorney, appeared as attorney for Respondent. The matter having been fully argued and submitted to the Court for decision, and the Court having filed herein its written opinion on Friday, February 17, 1967, and good cause appearing therefore:

IT IS HEREBY ORDERED that said demurrer be, and the same hereby is, overruled.

Dated: February 24, 1967.

s/ Robert L. Winslow
Robert L. Winslow, Judge
of the Superior Court [46]

Filed: March 21, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

v.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter came on regularly for trial at 8:30 a.m. on January 27, 1967, in Department I of the above entitled Court, the Honorable Robert L. Winslow, Judge, presiding, without a jury, and was actually tried on said date.

RAWLES, NELSON, GOLDEN & POULOS by JOHN W. POULOS, ESQ. appeared as attorneys for Petitioner and ARTHUR B. BROADDUS, District Attorney, by THOMAS B. SAWYER, Deputy District Attorney, appeared as attorney for Respondent.

Pursuant to the stipulation of the parties, the above entitled matter was submitted to the Court upon the verified Petition on file herein and the demurrer of the Respondent, on file herein, together with certain stipulations entered into by the parties at said hearing, and the Court having

considered the evidence, and said cause having been submitted for decision, and the Court having filed its written opinion herein on February 17, 1967, in favor of Petitioner and against Respondent now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

On August 22, 1966, a criminal complaint was issued and docketed in the Respondent Justice Court for the Ukiah [48] Judicial District, County of Mendocino, State of California, charging Petitioner JONATHAN TODD BYERS in Count I with a violation of Section 21750 of the California Vehicle Code and in Count II with a violation of Section 20002, Subdivision (a) of the Vehicle Code of the State of California. Said complaint was thereafter amended on its face to add the allegation that the offenses charged in Count I and Count II of said complaint were the same class of offense and connected together in their commission.

II

Count I of said complaint alleges:

> That said defendant did in the Ukiah Judicial District, County of Mendocino, State of California, on or about the 20th day of August, 1966, commit the crime of MISDEMEANOR, to-wit, violation of Section 21750 of the Vehicle Code of the State of California, in that said defendant did then and there while overtaking another vehicle proceeding in the same direction, fail to pass to the left at a safe distance as required by said Section of the Vehicle Code.

II

Count II of said complaint alleges:

> ... that said defendant did in the Ukiah Judicial Dis-

trict, County of Mendocino, State of California, on or about the 20th day of August [49] 1966, commit the crime of MISDEMEANOR, to-wit, violation of Subdivision (a) of Section 20002 of the Vehicle Code of the State of California, in that said defendant being then and there the driver of a vehicle involved in an accident resulting in injury to property did fail to immediately stop such vehicle at the scene of the accident, did fail to locate and notify the owner or person in charge of such property of the name and address of the driver and owner of the vehicle involved, did fail to leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and did without necessary delay, fail to notify the local headquarters of the Department of the California Highway Patrol.

IV

The alleged violation of Vehicle Code Section 21750 as alleged in Count I of said complaint resulted in an impact between the vehicle driven by the Petitioner and another vehicle which caused property damage and that the damage from this impact was the resulting injury to property alleged in Count II of said complaint. [50]

V

Petitioner was duly arrested on said charges contained in said complaint and held in the custody of the Sheriff of the County of Mendocino, State of California. Thereafter, and pursuant to Petitioner's request, The Honorable Hale McCowan, Jr., Judge of the Justice Court for the Ukiah

Judicial District, County of Mendocino, State of California, released Petitioner upon his own recognizance from the custody of the said Sheriff and Petitioner was at the time of the filing of the Petition herein, free on his own recognizance.

VI

Petitioner was duly arraigned in the said Justice Court and, within the time provided by law, Petitioner filed his written Demurrer to the complaint, and the charges set forth therein, attacking Vehicle Code Section 20002, Subdivision (a) as being unconstitutional, both upon its face and as applied to Petitioner in said complaint, upon the grounds that it violated the Petitioner's privilege against self-incrimination and his right to remain silent, secured to Petitioner by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section XIII of the California Constitution.

VII

Said Demurrer was argued and after said hearing the matter was taken under submission, and on December 7, 1966, the said Justice Court overruled said Demurrer and set the date for the arraignment of Petitioner for the purposes of entering a plea upon said charges contained in said Complaint for December 9, 1966. At the request of Petitioner, said Justice Court continued said arraignment until January 13, 1967, at the hour of 11:00 o'clock a.m.

VIII

On January 13, 1967, at the hour of 9:30 o'clock a.m. Petitioner presented his verified Petition for Writ of Prohibition requesting an alternative Writ of Prohibition and an Order to Show Cause why a peremptory Writ of Prohibition should not issue and on said date and at said time,

an Alternative Writ of Prohibition issued, which Alternative Writ of Prohibition provided as follows:

> THEREFORE, you are commanded to desist and refrain from arraigning the petitioner for the entrance of a plea to Count II and from trying and taking any further proceedings whatsoever in connection with said Count II of the complaint now pending in the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, which said complaint is docketed in Volume 91, Page 186 of the records of said Court and assigned Case No. A40692, until further order of this Court, and to show cause, if any you have, before this Court at 8:30 a.m. on January 27, 1967, in Department I of the above entitled Court in the [52] Mendocino County Courthouse, Ukiah, County of Mendocino, State of California, or as soon thereafter as the matter can be heard, why you should not be absolutely restrained from arraigning the defendant for the purposes of entering a plea upon Count II and from trying and taking any further proceedings upon said Count II contained in that complaint docketed in Volume 91, Page 186 of the records of said Court and assigned Case No. A40692.

IX

Unless restrained and prohibited by order of this Court, the said Justice Court threatens to and will require Petitioner to enter a plea upon the charges contained in Court II of said complaint and said Justice Court will pass upon, hear and try said charges.

X

Petitioner is the party having beneficial interest in this proceeding.

XI

No prior application for the Writ sought herein or any other writ pertaining to this matter has been made by the Petitioner herein.

XII

In the event any fact herein found shall be deemed or considered a conclusion of law, ti shall then be incorporated [53] in and become a part of the Conclusions of Law hereinafter made.

And from the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I

Petitioner has no plain, speedy and adequate remedy in the ordinary course of the law.

II

The said Justice Court is wholly without jurisdiction and is acting in excess of its jurisdiction, to proceed to arraign and try the Petitioner on the charges alleged in Court II of said complaint, to-wit, an alleged violation of Section 20002, Subdivision (a) of the Vehicle Code of the State of California, in that under the facts hereinabove found, said Section, 20002, Subdivision (a) violates Petitioner's privilege against self-incrimination secured to him by the Fifth Amendment to the United States Constitution as made applicable to the State of California by the Fourteenth Amendment to the United States Constitution.

III

Petitioner is emtitled to a permanent Writ of Prohibition commanding Respondent Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, to absolutely and permanently desist and refrain from ar-

raigning the Petitioner for the purposes of entering a plea upon the charges contained in Count II of said complaint and from hearing, trying and taking any further proceedings whatsoever on the allegations and charges contained in Count II of said complaint.

IV

In the event any Conclusion herein made shall be deemed or considered a Finding of Fact, it shall then be incorporated in and become a part of the Findings of Fact hereinabove made.

Dated: March 21, 1967.

s/ Robert L. Winslow
Robert L. Winslow
Judge of the Superior Court [55]

Jungments Book 44 Page 309
Entered March 21, 1967
Filed: March 21, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California for the County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

vs.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

JUDGMENT GRANTING PERMANENT WRIT OF PROHIBITION

This Court having issued an Alternative Writ of Prohibition and an Order to Show Cause in the above-entitled matter on January 13, 1967, and this matter having come on for hearing and trial on January 27, 1967, with RAWLES, NELSON, GOLDEN & POULOS by JOHN W. POULOS, ESQ. appearing as attorneys for Petitioner and ARTHUR B. BROADDUS, District Attorney, by THOMAS B. SAWYER, ESQ., Deputy District Attorney, appearing as attorney for Respondent, and the matter being submitted to the Court by stipulation of the parties upon the verified Complaint and Demurrer filed herein and the Court having considered the evidence and certain stipulations entered into at said trial, and the matter having been submitted to the Court for its decision and the Court hav-

ing filed its written Opinion herein and written Findings of Fact and Conclusions of Law having been made and filed, and it appearing that Petitioner has no plain, speedy or adequate remedy at law, and that a permanent Writ of Prohibition should issue, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a Permanent Writ of Prohibition be issued commanding Respondent, the Justice Court for the Ukiah Judicial District, Count of Mendocino, State of California, to absolutely and permanently desist and refrain from arraigning the Petitioner for the [56] entrance of a plea to the charges contained in Count II of that certain Complaint entitled, "In the Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, The People of the State of California, Plaintiff vs. Jonathan Todd Byers, Defendant," which said Complaint was docketed in Volume 91, Page 186 of the records of said Court and assigned Case No. A40692 and further commanding said Respondent to absolutely and permanently desist and refrain from hearing, trying any further proceedings whatsoever on the charges and allegations contained in Count II of said Complaint.

Dated: March 21, 1967.

s/ Robert L. Winslow
Robert L. Winslow
Judge of the Superior Court [57]

(Declaration of Service Omitted in Printing)

Filed: March 22, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
for the County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

v.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

NOTICE OF ENTRY OF JUDGMENT

TAKE NOTICE that on March 21, 1967, Judgment was entered in the above-entitled action in favor of Petitioner and against Respondent.

Dated: March 21, 1967.

RAWLES, NELSON, GOLDEN & POULOS
By s/ JOHN W. POULOS
John W. Poulos
Attorneys for Petitioner [58]

(Declaration of Service Omitted)

Filed: March 22, 1967
Viola N. Richardson, County Clerk

The Superior Court of the State of California
County of Mendocino

No. 28366

Jonathan Todd Byers,
Petitioner,

v.

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California,
Respondent.

NOTICE OF APPEAL

The Justice Court for the Ukiah Judicial District, County of Mendocino, State of California, Defendant-Respondent, appeals to the District Court of Appeal of the State of California, First Appellate District, from the Judgment.

DATED: March 22, 1967.

s/ ARTHUR B. BROADDUS
Arthur B. Broaddus
District Attorney of Mendocino
County and Attorney
for Appellant. [59]

Filed Sep 16 1969
William I. Sullivan, Clerk

In the Supreme Court of the State of California
In Bank

S. F. 22634

Jonathan Todd Byers,
Plaintiff and Respondent,
v.
The Justice Court for the Ukiah Judicial District of Mendocino County,
Defendant and Respondent;
The People,
Real Party in Interest and Appellant.

The People appeal from a judgment of the Superior Court of Mendocino County granting a writ of prohibition restraining the Justice Court for the Ukiah Judicial District from proceeding further against plaintiff Jonathan Todd Byers on count two of a criminal complaint filed in the justice court against him. Count one of the complaint charged Byers with improper and unsafe passing in violation of section 21750 of the Vehicle Code,[1] and [1*] count two charged him with violating one of the "hit-and-run" provisions in the Vehicle Code, section 20002, subdivision (a),[2] by leaving the scene of an automobile accident result-

1. Section 21750 provides: "The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe distance without interfering with the safe operation of the overtaken vehicle, subject to the limitations and exceptions hereinafter stated."

2. At the time of the accident section 20002, subdivision (a), provided: "The driver of any vehicle involved in an accident resulting in damage to any property including vehicles shall immedi-

*Page numbering appearing at foot of page of original certified opinion.

ing in property damage without furnishing his identity and certain other information to the owner or person in charge of the damaged property.

Byers demurred to count two on the ground that section 20002, subdivision (a), was unconstitutional as applied because it violated his privilege against self-incrimination. It was stipulated by counsel that the two alleged Vehicle Code violations arose out of the same [2] occurrence, i.e., that the alleged improper passing caused the accident from which Byers assertedly departed without providing statutorily required information. The justice court overruled the demurrer.

Upon application by Byers the superior court granted a writ of prohibition restraining further proceedings on count two on the ground that section 20002, subdivision (a), could not be applied against Byers under the circumstances of the case without infringing his privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States.

The Fifth Amendment privilege against self-incrimination—a protection against state as well as federal govern-

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ately stop the vehicle at the scene of the accident and shall then and there either: (1) Locate and notify the owner or person in charge of such property of the name and address of the driver and owner of the vehicle involved, or; (2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol. Any person failing to stop or to comply with said requirements under such circumstances is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not to exceed six months or by a fine of not to exceed five hundred dollars ($500) or by both."

In 1967 this section was amended in several minor respects not pertinent to this case.

mental action (Malloy v. Hogan, 378 U.S. 1)—ordinarily provides a defense to prosecution for failure to supply statutorily required information in cases where the defendant has reasonable ground to apprehend a substantial danger that such information, if supplied, would be available to prosecuting authorities and could be used as a significant "'link in a chain'" of evidence tending to establish his guilt of some criminal offense. (Marchetti v. United States, 390 U.S. 39, 48; Grosso v. United States, 390 U.S. 62, 66-67; Haynes v. United [3] States, 390 U.S. 85, 95-97, 101; Albertson v. SACB, 382 U.S. 70, 77-79, 81.)

The crucial inquiry in determining the applicability of the privilege to a statutory disclosure-of-information requirement is whether the individual seeking to avoid disclosure faces "substantial hazards of self-incrimination" because in his particular case there is a substantial likelihood that information disclosed by him in compliance with the statute could by itself or in conjunction with other evidence be used to secure his conviction of a criminal offense. (Marchetti v. United States, *supra*, 390 U.S. 39, 61.)

In *Marchetti, Grosso, Haynes,* and *Albertson,* the registration statutes with which petitioners failed to comply required a "highly selective group" of persons "inherently suspect" of criminal activity (Albertson v. SACB, *supra*, 382 U.S. 70, 79) to disclose information concerning acts or activities which were either clearly illegal under federal law (as in *Albertson)* or very likely illegal under federal or state law. However, in each case the crime-directed character of the registration requirement was viewed as important only insofar as it supported the claims of the specific petitioners that they faced "substantial hazards of

self-incrimination" justifying invocation of the privilege.

In *Marchetti* the court specifically recognized that there might be circumstances in which a person subject to the registration requirements of the federal wagering tax could not demonstrate that compliance would create for [4] him "substantial hazards of self-incrimination" so as to warrant his invocation of the privilege. (Marchetti v. United States, *supra,* 390 U.S. 39, 61; compare Haynes v. United States, *supra,* 390 U.S. 85, 97; Grosso v. United States, *supra,* 390 U.S. 62, 64.)[3]

Four Court of Appeal cases have considered whether the privilege against self-incrimination precludes prosecution under "hit-and-run" statutes. In the early case of People v. Diller, 24 Cal. App. 799, the court rejected the argument that the "hit-and-run" statute there in issue [5] was inher-

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3. The court in Marchetti noted that "Wagering and its ancillary activities are very widely prohibited under both federal and state law." (390 U.S. at p. 44.) However, the court discussed in detail the state laws prohibiting gambling and wagering in Connecticut, the state where petitioner allegedly conducted his wagering activities, before concluding that "Every aspect of petitioner's wagering activities . . . subjected him to possible state or federal prosecution" (*id.* at p. 47) and that "In these circumstances, it can scarcely be denied that the obligations to register and to pay the occupational tax created for petitioner 'real and appreciable' ... hazards of self-incrimination" (*id.* at p. 48).

In *Grosso* the court also referred to "the various state and federal penalties which have been imposed upon wagering" but pointed out specifically that "Pennsylvania, in which petitioner allegedly accepted wagers, has adopted a comprehensive statutory system for the punishment of gambling and ancillary activities" in concluding that Grosso was entitled to invoke the privilege. (390 U.S. 62, 64.)

It is possible that certain persons engaged in wagering in Nevada, where only "lotteries and certain other wagering activities taxable under [the federal wagering tax]" are prohibited (Marchetti v. United States, *supra,* 390 U.S. at pp. 45-46), are not privileged to refrain from complying with the provisions of the federal wagering tax.

ently in conflict with the then-controlling state constitutional prohibition against self-incrimination. There was no evidence to show that had the defendant driver complied with the statute he might have incriminated himself, and the court expressly left open the question whether the privilege could be asserted in a case where there was a showing that, because of the particular facts surrounding the "hit-and-run" accident, the defendant might reasonably have feared that the disclosure of information required by the statute would tend to incriminate him.[4] *Diller* was [6] followed in People v. Fodera, 33 Cal. App. 8.

In People v. Limon, 252 Cal. App. 2d 575, a defendant convicted of a "hit-and-run" violation (Pen. Code, § 20001 [covering accidents involving personal injury] established that prior to the accident he had been drinking rather

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4. Two leading decisions by courts in other states have similarly upheld the essential validity of "hit-and-run" statutes against claims that they were inherently in conflict with state constitutional prohibitions against compulsory self-incrimination while leaving open the question whether in certain narrow circumstances a claim of privilege would excuse noncompliance with such statutes. (Commonwealth v. Joyce (1951) 326 Mass. 751, 756 [97 N.E. 2d 192]; Ex Parte Kneedler (1912) 243 Mo. 632, 640 [147 S.W. 983].)

It would appear that the recent decision of the Supreme Court of Illinois in People v. Lucus (1968) ___ Ill. 2d ___ [243 N.E. 2d 228], construing the federal constitutional privilege, follows the same approach as *Diller* and the cases cited above. The court stated: "Using the standard of Marchetti v. United States . . . the [Illinois "hit-and-run"] statute's provisions do not present a substantial and real hazard of [self-]incrimination." (243 N.E. 2d at p. 231.) The court did not expresly leave open the question whether the federal privilege would ever excuse noncompliance with a "hit-and-run" statute, but the statement of facts indicates that this question was implicitly left open. The appellant in *Lucus* was neither convicted of nor charged with any other offense in connection with the accident which gave rise to his statutory duty to identify himself. Nor is there any indication that any such charge would have been warranted. In other words, there was no showing that the appellant had any basis for a reasonable fear that compliance with the "hit-and-run" statute would lead to self-incrimination.

freely, and he claimed that the "hit-and-run" statute was unconstitutional as applied to him because by stopping and identifying himself as required by the statute he might have incriminated himself with regard to a possible charge of driving under the influence of liquor. Although the defendant thus alleged the sort of specific fear of self-incrimination carefully distinguished in *Diller*, the court disposed of defendant's claim merely by citing Diller for the proposition that the "validity of the statute was established long ago." (252 Cal. App. 2d at p. 579.)

The later case of People v. Bammes, 265 A.C.A. 713, 722-723, rejected the claim of privilege by a defendant [7] who was convicted of "hit-and-run" and charged with but acquitted of vehicluar manslaughter in connection with the accident furnishing the basis of the "hit-and-run" conviction. The court sought to distinguish the cases of *Marchetti, Grosso,* and *Haynes* on the ground that the statutes there involved were directed almost exclusively against a highly selective group of individuals inherently suspect of criminal activities whereas the "hit-and-run" statutes do not require the driver to admit involvement in the accident but only to identify himself as a driver of a vehicle "which was at or near the scene of the accident when it occurred." (*Id.* at p. 723.)

The court in *Bammes* inaccurately characterized the "hit-and-run" statute involved in that case (Veh. Code, § 20001), a statute similar in all relevant particulars to the statute involved in the present case; it also inaccurately distinguished *Marchetti, Grosso,* and *Haynes* from the case before it. First, although it is true that neither section 20001 nor section 20002 explicitly requires drivers involved in accidents to identify themselves *as* involved drivers, neither

can fairly be read to require only that an involved driver identify himself as merely having been "at or near the scene of the accident when it occurred." Even if these statutes could [8] be so read, it seems clear that in almost all circumstances it would be obvious to the person to whom the identification was made that the person supplying identification was a driver involved in the accident.

Second, although not all drivers involved in accidents are lawbreakers, there is a substantial correlation between being a driver involved in an accident and being a driver who has contemporaneously violated one or more vehicle laws.

"Hit-and-run" cases should be contrasted with Shapiro v. United States, 335 U.S. 1, where the statute involved was directed at a class of individuals not ordinarily suspect of criminal activities, namely, dealers in commodities. The court there held that no violation of the privilege against self-incrimination was involved in a prosecution based in part on information contained in records required to be kept for price regulation purposes where the records were of a kind customarily kept by such persons and where the required records had assumed "public aspects" which rendered them at least analogous to public documents.

Although the group subject to "hit-and-run" statutes, drivers involved in accidents, is not inherently suspect of criminal activities to the same extent [9] as the groups regulated by the statutes in *Marchetti, Grosso,* and *Haynes,* there is in the accident cases, unlike the situation in *Shapiro,* a substantial shadow of suspicion cast upon the persons regulated by the statute. Where circumstances in addition to membership in a suspect group regulated by a disclosure statute show that compliance with the statute

would involve self-incrimination, the rules set forth in *Marchetti, Grosso,* and *Haynes,* are applicable.

Decisions of the United States Supreme Court make clear that the privilege against self-incrimination is a personal one, and that whether the government may require a disclosure depends upon the facts of each case. Invocation of the privilege is not limited to situations in which the *purpose* of the inquiry is to get an incriminating answer. It is the *effect* of the answer that is determinative. "To sustain [a claim of] privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." (Hoffman v. United States, 341 U.S. 479, 486-487; see Mansfield, *The Albertson Case: Conflict* [10] *Between the Privilege Against Self-Incrimination and the Government's Need for Information,* 166 Sup. Ct. Rev. 103, 147-148.)

Nor is invocation of the privilege limited to situations in which the information requested would, without more, support a criminal conviction. "The privilege . . . not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute . . . ." (*Id.* at p. 486; accord, Marchetti v. United States, *supra,* 390 U.S. 39, 48; Albertson v. SACB, *supra,* 382 U.S. 70, 78; Malloy v. Hogan, *supra,* 378 U.S. 1, 11-12; see McCormick, Evidence (1954) § 129, p. 271.) For example, in *Albertson* the court held that orders compelling petitioners to complete and file form IS-52 (which sought disclosure from members of "Communist-action organizations" of the name of the organization, place and date of

birth, and a list of offices held in the organization and duties thereof) violated the privilege because a response to any of the questions "might be used as evidence in or at least supply investigatory leads to a criminal prosecution." (382 U.S. at p. 78.) [11]

We are satisfied that the privilege is applicable when a driver of a motor vehicle involved in an accident is confronted with a statutory requirement to stop and divulge his identity and reasonably believes that compliance with the statute will result in self-incrimination. (See Mansfield, *supra,* 1966 Sup. Ct. Rev. 103, 121-122; McCormick, *supra,* § 134, pp. 283-284;[5] cf. Rembrandt v. City of Cleveland (Ohio App. 1927) 161 N.E. 364 [ordinance requiring drivers involved in accidents to make full report to police].) "That [the driver's] operation of a motor vehicle was causally related to an injury to person or property or to a particular incident on the highway may be crucial in a subsequent criminal prosecution. From other information it may be clear that whoever was driving a given vehicle was guilty [12] of a crime, and the only question is whether the defendant was the operator of that vehicle." (Mansfield, *supra,* 1966 Sup. Ct. Rev. 103, at p. 122.)

It does not matter, as the People appear to contend, that in some "hit-and-run" situations prosecuting authorities may be able to establish the driver's identity beyond a rea-

5. McCormick asserts that "When . . . the circumstances indicate reckless or wanton conduct by the person compelled to [comply with a "hit-and-run" statute] the required statement identifying himself as a person involved clearly meets the accepted test of incrimination, that is, the existence of substantial danger that the required statement will furnish evidence of an essential element of a crime." (P. 283.) However, MsCormick feels that since a "hit-and-run" statute is a reasonable police power regulation the privilege must yield "to the extent necessary to make effective this power of protecting safety on the highways." (P. 284.)

sonable doubt from other evidence such as eyewitness identification of the driver, his vehicle, or its license plate. "[T]he basic purposes that lie behind the privilege against self-incrimination . . . relate . . . to preserving the integrity of a judicial system in which even the guilty are not to be convicted unless the prosecution 'shoulder the entire load.'" (Tehan v. Shott, 382 U.S. 406, 415.) "Governments, state and federal, are . . . constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth." (*Id.* at p. 414.)

The People urge that the privilege may not be asserted as a defense to compliance with section 20002 of the Penal Code because the state may regulate the use of its highways and the operation of motor vehicles by conditioning participation in these activities on compliance with section 20002 and other "hit-and-run" [13] statutes even in cases where this entails a forced waiver of the constitutional privilege against self-incrimination. (See generally, Note, *Required Information and the Privilege Against Self-Incrimination,* 65 Colum. L. Rev. 681, 686-687.) This theory, employed in a number of state court decisions prior to Malloy v. Hogan, *supra,* 378 U.S. 1, to reject claims that "hit-and-run" statutes violated state constitutional prohibitions against compulsory self-incrimination (e.g., State v. Razey (1929) 129 Kan. 328, 282 Pac. 755; People v. Rosenheimer, 209 N.Y. 115; see People v. Diller, *supra,* 24 Cal. App. 799) is untenable.

In Bagley v. Washington Township Hospital Dist., 65 Cal. 2d 499, 503-507, we held that the state may not condition the enjoyment of some benefit or privilege on the nonassertion of a constitutional right where "the utility of

imposing the conditions [does not] manifestly outweigh any resulting impairment of constitutional rights." As will be demonstrated hereinafter, the objective underlying section 20002 of the Vehicle Code can be achieved by a means unoffensive to the privilege against self-incrimination.

Since compliance with section 20002 of the Vehicle [14] Code may require disclosures coming within the privilege against self-incrimination and since the purpose of that section is to protect property owners from financial loss by requiring drivers involved in accidents resulting in property damage to disclose their identities (People v. Stansberry, 242 Cal. App. 2d 199, 203; Miglierini v. Havemann, 240 Cal. App. 2d 570, 573), the present case exemplifies a conflict much discussed by commentators in recent years, the conflict between the individual's right to protection under the Fifth Amendment privilege against self-incrimination and the government's substantial interest in having citizens report or otherwise divulge information to effectuate various regulatory measures designed to promote the public welfare. (See, e.g., Mansfield, *supra*, 1966 Sup. Ct. Rev. 103; McKay, *Self-Incrimination and the New Privacy*, 1967 Sup. Ct. Rev. 193, 204-224, 228-232; Note, *supra*, 65 Colum. L. Rev. 681.)

Obviously, "it is imperative to effect an accommodation that will permit government to collect vitally needed information without impairing the purposes of the privilege." (McKay, *supra*, at p. 204.) Decisions of the United States Supreme Court suggest a form of accommodation which provides the appropriate resolution of the conflicting interests involved in the present case. In brief, these decisions [15] provide (1) that the state may require a person to disclose information otherwise subject to a claim of privi-

lege if in place of the protection conferred by the privilege there is substituted another protection, having the same scope and effect as the privilege, namely, immunity from use of the information or its fruits in connection with a criminal prosecution against the person; and (2) that, when consistent with both legislative intent and effective enforcement of the criminal laws, a court may hold that such immunity exists, and therefore that disclosure is required, despite the absence of any specific legislative grant of immunity.

In Ullmann v. United States, 350 U.S. 422, 438-439, the United States Supreme Court stated that the "sole concern" of the privilege is "with the danger to a witness forced to give testimony leading to the infliction of 'penalties affixed to the criminal acts . . . .'" which such testimony may disclose and that "Once the reason for the privilege ceases, the privilege ceases." In Marchetti v. United States, *supra,* 390 U.S. 39, 58, the court reaffirmed the proposition that "the privilege against self-incrimination may not properly be asserted if other protection is granted which 'is so broad as to have the [16] same extent in scope and effect' as the privilege itself."

Recent decisions have made it clear that an individual raising a valid claim of privilege need not be given complete immunity from prosecution in order to be compelled to testify.[6] (Gardner v. Broderick, 392 U.S. 273, 276; Al-

6. Language in Counselman v. Hitchcock, 142 U.S. 547, 585 ["[N]o statute which leaves the party or witness subject to prosecution after he answers the criminating question . . . can have the effect of supplanting the privilege . . . . ."], justified until recently speculation that only complete immunity from prosecution for an offense revealed by information the disclosure of which is compelled would supplant the privilege. (See Mansfield, *supra,* 1966 Sup. Ct. Rev. 103, 164; McKay, *supra,* 1967 Sup. Ct. Rev. 193, 229-230.)

bertson v. SACB, *supra,* 382 U.S. 70, 79-81; Murphy v. Waterfront Comm., 378 U.S. 52, 79.) The rule is, as stated in *Gardner:* "Answers may be compelled regardless of the privilege if there is immunity from federal and state use *of the compelled testimony or its fruits* in connection with a criminal prosecution against the person testifying." (Italics added.)

This rule is the logical corollary of the rule that when information is the product of an involuntary disclosure secured in violation of the privilege the person disclosing the information is merely protected [17] from prosecution on the basis of such information and the fruits thereof and not from any and all prosecution for offenses to which the information relates. (E.g., Garrity v. New Jersey, 385 U.S. 493; Miranda v. Arizona, 384 U.S. 436, 479 [majority opinion], 500, 522 [dissenting opinions].)

Accordingly, if the disclosures compelled by section 20002 of the Vehicle Code and the fruits of such disclosures may not be used in a criminal prosecution relating to the accident, the requirements of the privilege against self-incrimination are met. There is no statute explicitly providing for evidentiary use restrictions for persons complying with section 20002, subdivision (a), in cases where such persons would otherwise have a valid claim of privilege. Therefore, we must consider whether such restrictions may properly be imposed by this court.

There is precedent for judicial imposition of appropriate restrictions on the use of statements in order to compel otherwise privileged testimony. In Murphy v. Waterfront Comm., *supra,* 378 U.S. 52, petitioners were subpoenaed to testify at a hearing conducted by the bistate Waterfront Commission of New York Harbor concerning a work stop-

page at certain piers. Although granted immunity from prosecution under the laws of the two states [18] whose criminal laws were potentially applicable, New York and New Jersey, petitioners refused to respond to questions on the ground that the answers might tend to incriminate them under federal law, to which the grant of immunity did not purport to extend. On certiorari, petitioners attacked a decision of the New Jersey Supreme Court upholding civil contempt judgments rendered against petitioners for their refusals to answer. The United States Supreme Court held that (1) "a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him" and (2) "in order to implement this constitutional rule . . . the Federal Government must be prohibited from making any such use of compelled testimony and its fruits. . . ." (*Id.* at p. 79.)

In Marchetti v. United States, *supra,* 390 U.S. 39, 58, the government urged the court to permit continued enforcement of the federal occupational tax on wagerers, including the registration provisions, by imposing restrictions from use of self-incriminating information employed in *Murphy.* The court recognized this suggestion [19] as "in principle an attractive and apparently practical resolution of the difficult problem before us." Since the court explicitly assumed that the principal purpose of the federal wagering tax was "the collection of revenue, and not the punishment of gamblers" (*id.* at p. 57) and recognized that the registration requirement was a regulatory requirement designed to assure collection of the tax, the "problem" before the court

was essentially the same problem presented in the present case, the accommodation of the individual's right to assert his privilege against self-incrimination and the government's interest in requiring the disclosure of information to effectuate a legitimate civil regulatory measure.

Although it recognized that the judicial-imposition-of-use-restriction approach was theoretically acceptable as a device for reconciling conflicting private and governmental interests, the court declined to use it in *Marchetti*. The court felt this approach was inappropriate in the circumstances of that case for two reasons: (1) The very terms of the wagering tax statute evidenced Congress' intent that information obtained from registration should be provided to interested prosecuting authorities, and the Internal Revenue Service evidently [20] consistently carried out this intention, so that "the imposition of use-restriction would directly preclude effectuation of a significant element of Congress' purposes in adopting the wagering taxes." (*Id.* at pp. 58-59) (2) Imposition of such restrictions would oblige state prosecuting authorities to establish in each case of alleged illegal wagering that their evidence was untainted by any connection with information divulged because of the wagering tax, so that the enforcement of state gambling laws might be seriously hampered. (*Id.*)[7]

7. In Grosso v. United States, *supra*, 390 U.S. 62, a companion case involving the federal excise tax on wagering, the court also declined to impose use-restrictions on information obtained as a consequence of payment of the tax. "[I]t would be inappropriate to impose such restrictions upon one portion of a statutory system, when we have concluded that it would be improper, for reasons discussed in *Marchetti*, to do so upon 'an integral part' [footnote omitted] of the same system." (390 U.S. at p. 69.) In Haynes v. United States, *supra*, 390 U.S. 85, a case involving a claim of privilege as a defense to failure to register a certain firearm as required by federal law, the court declined, "for reasons indicated in *Marchetti*, *supra*, and *Grosso*, *supra*, to impose [use-]restrictions...." (390 U.S. at p. 100.)

With regard to the second of these reasons, it must be conceded that one result of any statutory or judicial restriction on the use of compulsorily divulged information or its fruits in connection with a criminal prosecution against the person divulging the information is that in any such prosecution the government [21] must bear the burden of establishing that its evidence was untainted by any connection with the information divulged, i.e., that the evidence came from an independent source. (Marchetti v. United States, *supra,* 390 U.S. 39, 59, fn. 17.) If this fact alone were sufficient cause to reject the use-restriction approach, the United States Supreme Court would not have adopted it in Murphy v. Waterfront Comm., *supra,* 378 U.S. 52, 79, in solving a problem involving a state demand for information and a federal prosecutorial interest nor recognized it as "in principle an attractive and apparently practical" solution to the problem in Marchetti v. United States, *supra,* at p. 58, which involved a federal demand for information and both state and federal prosecutorial interests. Indeed, an excessive concern for the government's burden of showing that evidence used in a prosecution is untainted is inherently at odds with the Supreme Court's recently clarified basic position that immunity sufficient to justify compelling a disclosure otherwise privileged need not be complete immunity from prosecution.

The reason the Supreme Court pointed to the potential burden on state prosecuting authorities as one basis for rejecting the use-restriction approach in [22] *Machetti* was most likely the court's concern with a delicate problem of conflicting federal and state interests. In *Murphy,* in order to "accommodate the interests of the State and Federal Governments in *investigating and prosecuting crime*" the

court held that a state may compel a witness to give testimony which may be incriminating under federal law and that if it does so "the Federal Government [is] prohibited from making any . . . use of [such] compelled testimony and its fruits [in connection with a criminal prosecution against him]." (378 U.S. 52, 79, italics added.) This accommodation was consistent with the traditional notion that in our system of federalism the states and not the federal government have primacy in the field of law enforcement. In *Marchetti,* on the other hand, the imposition of use-restrictions on *state* prosecuting officials, as urged by the United States, would have involved putting a possibly considerable burden on state prosecuting authorities in order to serve a federal interest in obtaining information as an incident to a purported but dubious interest in raising revenue, information which the court felt Congress could secure by "other methods, entirely consistent with constitutional limitations. . . ." (390 U.S. at p. 60.) Thus, the [23] accommodation suggested by the federal authorities in *Marchetti* would have been consistent with neither the court's concern for federal-state comity nor with the rule prohibiting infringement of constitutional rights for an otherwise legitimate state purpose where that purpose could be accomplished by a less onerous means. (E.g., Aptheker v. Secretary of State, 378 U.S. 500, 512-513; Sherbert v. Verner, 374 U.S. 398, 407.)

In the present case, on the other hand, the imposition by this court of a restriction on the use by prosecuting authorities of information supplied in compliance with section 20002, subdivision (a), of the Vehicle Code is not only "in principle an attractive and apparently practical resolution of the difficult problem before us" (Marchetti v. United

States, *supra,* 390 U.S. 39, 58), but it will neither frustrate any apparent significant legislative purpose nor unduly hamper criminal prosecutions of drivers involved in accidents resulting in damage to the property of others.

The face of the statute does not disclose any legislative intent to use the required disclosure of information to facilitate prosecutors for possible criminal acts occurring in connection with automobile accidents involving property damage. If the driver can [24] locate the owner or person in charge of the property damaged he need only disclose to that individual his and the automobile owner's name and address; if he cannot locate such person, he must leave a written notice containing the same information and "a statement of the circumstances" surrounding the accident as well as "notify" local law enforcement officials, ostensibly to make sure that the owner or person in charge of the damaged property can contact the driver by consulting the written notice or, if it has been removed or destroyed, such officials.

Not only does the statute on its face fail to disclose any legislative concern with facilitating criminal prosecutions but the courts have consistently recognized that the purpose of the statute is to promote the satisfaction of civil liabilities arising from automobile accidents involving property damage by inducing all drivers involved in such accidents to identify themselves to the owners or persons in charge of any damaged property. (People v. Stansberry, *supra,* 242 Cal. App. 2d 199, 203; Miglierini v. Havemann, *supra,* 240 Cal. App. 2d 570, 573.) In short, in enacting section 20002 and its predecessor sections the Legislature was concerned only with protecting the interests of private parties who suffer loss as the result of property damage occurring in automobile accidents. [25]

Nor is section 20002 part of any larger legislative scheme to facilitate criminal prosecutions. Rather, it is related in coverage and intent to the financial responsibility law (Veh. Code, §§ 16000-16553)[8] the primary purpose of which is to protect persons who while lawfully using the public highways suffer financial loss as a result of another's negligent use of the highways. (Mission Ins. Co. v. Feldt, 62 Cal. 2d 97, 101; Interinsurance Exchange v. Ohio Cas. Ins. Co., 58 Cal. 2d 142, 153.)

Finally, it is instructive, in determining legislative intent, to consider an analogous field of legislation involving a similar conflict between requiring disclosures for noncriminal purposes and the privilege against self-incrimination. In the statutes requiring drivers involved in accidents resulting in personal injury or death to file accident reports, the Legislature has explicitly subordinated the state's prosecutorial interest to the interest [26] in obtaining the disclosure.[9]

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8. Section 16000 requires the driver of every vehicle involved in an accident resulting from the operation of a motor vehicle on the public highways and damaging the property of any one person in an amount exceeding $200 to report the accident to the Department of Motor Vehicles. With certain exceptions, every such driver must then demonstrate the financial ability to satisfy any judgment that may be recovered against him or the owner of the vehicle for damage to property or suffer a suspension of his driving privileges. (Veh. Code, §§ 16020, 16050-16060, 16080.)

9. Section 20012 of the Vehicle Code provides that "All required *accident reports* . . . shall be without *prejudice* to the individual so reporting and shall be for the *confidential use* of the Department of Motor Vehicles and the Department of the California Highway Patrol, except that the Department of the California Highway Patrol or the law enforcement agency to whom the accident was reported shall disclose the contents of the reports . . . to any person who may have a proper interest therein, including, but not limited to [various enumerated private parties possibly affected financially and/or legally by the accident], . . ." (Italics added.)

In the present case there is no problem of conflicting state and federal interests; it is the state which both demands disclosure of information in "hit-and-run" accidents and prosecutes those who commit criminal acts on the highways. Imposing use-restrictions in the present case merely involves this court in making a judgment, based on an assessment of probable legislative intent, that the Legislature would prefer to have the provisions of section 20002 of the Vehicle Code upheld even in cases involving possible criminal misconduct at the cost of some burden on prosecuting authorities in criminal cases arising out of or related to an accident covered by that section rather [27] than avoid that burden at the cost of significantly frustrating the important noncriminal objective of the legislation. Imposition of use-restrictions in the present case will not preclude the Legislature from overriding our decision if it wishes by simply enacting legislation declaring that information derived from disclosures required by section 20002, subdivision (a), *may* be used in criminal prosecutions, in which case the privilege could be claimed in appropriate situations.

There is another significant distinction between the circumstances in *Marchetti* and the circumstances in the present case. In *Marchetti* the imposition of use-restrictions on information obtained as a result of compliance with the federal wagering tax would have had a much more sweeping effect on state law enforcement than would the imposition of such restrictions here. It appears that most—per-

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Section 20013 provides that except to prove compliance or noncompliance with the requirement that an accident report be filed no accident report may be "used as evidence in any trial, civil or criminal, arising out of an accident, . . ."

haps almost all—violators of state criminal prohibitions against wagering and related activities are subject to the disclosure requirements of the federal wagering tax. (Marchetti v. United States, *supra*, 390 U.S. 39, 44-46, fns. 5-6.) Thus, the imposition of use-restrictions in order to permit Congress to compel all wagerers to comply with the wagering tax law would have meant that in almost all state prosecutions for wagering or related illegal activities the state would be forced, if the defendant proved [28] compliance with the federal law, to establish that its evidence was untainted. This situation might indeed seriously hamper such state prosecutions. By contrast, far from all criminal violations committed on the highways by drivers of motor vehicles involved property damage. The burden resulting from the imposition of use-restrictions in the latter situation will exist only in those instances where property damage occurs in the course or as a result of a criminal violation committed on the highways by a driver.

We conclude that criminal prosecutions of drivers involved in accidents will not be unduly hampered by rules that prosecuting authorities may not use information divulged as a result of compliance with section 20002, subdivision (a), of the Vehicle Code or the fruits of such information and that in prosecutions of individuals who have complied with that section the state must establish that its evidence is not the fruit of such information.

Since imposition in the present case of use-restrictions as described above will neither frustrate any apparent legislative purpose behind the enactment of section 20002 of the Vehicle Code nor unduly hamper criminal prosecutions of drivers involved in accidents; [29] and since the imposition of such restrictions will not preclude the state

Legislature from overriding our decision if it wishes, the reasons impelling the United States Supreme Court to reject the "attractive and apparently practical" suggestion of imposing restrictions in Marchetti v. United States, *supra*, 390 U.S. 39, 58, are absent in the present case, and we must, in order to fulfill our responsibility to protect the privilege against self-incrimination, hold that where compliance with section 20002 of the Vehicle Code would otherwise be excused by an assertion of the privilege, compliance is, as in other cases, mandatory and state prosecuting authorities are precluded from using the information disclosed as a result of compliance or its fruits in connection with any criminal prosecution related to the accident.

In the present case, the superior court correctly concluded that at the time of the accident, Byers had reasonable ground to apprehend that if he stopped to identify himself as required by section 20002 of the Vehicle Code he would confront a substantial hazard of self-incrimination. The court had before it the fact that Byers was charged with violating section 21750 of the Vehicle Code and the stipulation that the accident [30] giving rise to the obligation under section 20002 resulted from the alleged violation of section 21750.

Although the privilege against self-incrimination was applicable, the privilege does not furnish a defense to a charge of violation of section 20002 because the purpose of the privilege is satisfied by the rule we adopt today that prosecuting authorities are precluded from using information divulged in compliance with section 20002 and the fruits of such information in circumstances where the driver would otherwise be constitutionally privileged not to comply. Thus, the judgment granting the writ of pro-

hibition cannot be affirmed on the theory, employed by the superior court, that Byers was privileged to withhold the information required by section 20002.

However, it does not follow that the judgment must be reversed; we must determine whether, in light of the fact that we here announce a doctrine new to this state's jurisprudence, fairness dictates that Byers not be punished for his failure to comply with section 20002.

In Murphy v. Waterfront Comm., *supra,* 378 U.S. 52, 79-80, the United States Supreme Court reversed the petitioners' contempt convictions because although under the holding of the case they could be required to testify [31] in view of the court-declared restrictions on the use of their testimony in any federal prosecution, at the time they originally refused to answer they had a reasonable fear that their testimony could be used by federal authorities in a criminal prosecution. At the time they refused to answer, petitioners' claim of privilege was ineffective under then-controlling decisions. The court, in holding for the first time that the privilege was applicable and that it was satisfied by use-restrictions, felt that fairness required that petitioners be given the opportunity to avoid contempt convictions by answering the questions put to them in light of the new protection afforded them as a matter of constitutional right under the holding of the case.

In the present case, Byers is in a position substantially similar to that of petitioners in *Murphy.* Byers had a reasonable basis for fearing that compliance with the "hit-and-run" statute would produce incriminating evidence which could be used against him in a criminal prosecution. At the time of the accident, Byers' claim of privilege was not

supported by then-controlling decisions.[10] This court [32] now holds that the privilege against self-incrimination is applicable to such a case, as Byers urges, but we also establish today for the first time restrictions on the use of information disclosed in compliance with the "hit-and-run" statute, and on the basis of such restrictions, we hold that compliance with the statute is not excused by the existence of the privilege.

The differences between the position of the petitioners in *Murphy* and Byers in this respect are not material. Byers did not expressly claim the privilege when he left the scene of the accident, but if he had stopped to do so, he would in the light of existing law thereby have rendered nugatory any claim of privilege. Although in *Murphy* the court in vacating the contempt judgment provided that the petitioners would then be required to testify in the light of the new protection afforded them should the state authorities still wish to question them, in the instant case, it does not appear that any valid purpose would be served by requiring Byers to now comply with the "hit-and-run" statute. [33]

We conclude, on the basis of Murphy v. Waterfront Comm., *supra,* that it would be unfair to hold that although Byers correctly asserted that the Fifth Amendment privilege was applicable to the question of his compliance with

10. In this respect Byers is in a better position than the petitioners in *Murphy*. They were faced with clear decisions that the privilege was inapplicable, whether or not their statements would be incriminating in a subsequent federal prosecution; Malloy v. Hogan, *supra,* 378 U.S. 1, holding the federal constitutional privilege applicable to state proceedings, was a companion case of *Murphy*. At the time of the accident, the leading California decision, People v. Diller, *supra,* 24 Cal. App. 799, left open the possibility that in some cases the state constitutional privilege would excuse noncompliance with a "hit-and-run" statute.

the "hit-and-run" statute he should have complied because of use-restrictions which he could only have speculated might exist.

The judgment is affirmed.

PETERS, J.

WE CONCUR:

TRAYNOR, C.J.

TOBRINER, J.

MOSK, J.

SULLIVAN, J. [34]

DISSENTING OPINION BY BURKE, J.

I dissent. The majority opinion holds that the privilege against self-incrimination, though applicable to section 20002 of the Vehicle Code, does not furnish a defense to a charge of violation of that section since the privilege is satisfied by precluding prosecuting authorities from using information divulged in compliance therewith (opinion, p. 31). Nevertheless, the majority would affirm the judgment granting the writ of prohibition to Byers on the sole ground that "fairness dictates that Byers not be punished for his failure to comply with section 20002," relying upon *Murphy* v. *Waterfront Comm.*, 378 U.S. 52, 79-80 (opinion, p. 31). I do not believe that the rationale of *Murphy* should be applied to the instant case.

In *Murphy,* petitioners claimed the privilege and refused to testify at a state agency hearing on the ground that their testimony might tend to incriminate them under federal law. The court held that petitioners [1] could be compelled to answer the questions propounded to them, since the federal authorities would be prohibited from using their testimony or its fruits against them in any subsequent criminal proceeding. However, the court vacated the contempt judgment in order to afford petitioners an opportunity to testify and thereby purge themselves of contempt. The court noted that at the time petitioners refused to testify, they had a "reasonable fear, based on this Court's decision in *Feldman* v. *United States* . . . [322 U.S. 487], that the federal authorities might use the questions against them . . . ." (378 U.S. at p. 79.)

The result reached in *Murphy* appears defensible, as it not only gave petitioners, who had claimed the privilege under a "reasonable fear" of federal prosecution, on op-

portunity to purge themselves of contempt by furnishing the requested information, but also promoted the interests of the state in obtaining that information from them. However, *Murphy* should not be used to totally exculpate Byers from his violation of section 20002.

Unlike the petitioners in *Murphy,* Byers claimed no privilege when he violated section 20002—instead he simply left the scene of the accident without furnishing the required information. Nothing in the record suggests [2] that in so doing Byers intended to claim or exercise the privilege against self-incrimination under a reasonable fear of prosecution. As the majority opinion indicates, California decisions in existence at the time of the accident did not recognize the application of the privilege to "hit-and-run" cases. (Opinion, p. 32.)

Therefore, if Byers was unaware of the existence of the privilege and was not acting in reliance upon existing state law, how are the ends of justice met by excusing Byers from conduct which, as the majority hold, remains unlawful and unprivileged? I cannot see any element of unfairness in holding Byers fully responsible for the consequences of his deliberate violation of section 20002.

Moreover, unlike the result reached in *Murphy,* the majority holding promotes no corresponding governmental interest to balance a determination of leniency towards Byers, since obviously any offer by him to comply with the requirements of section 20002 would come several years too late. [3]

In my view, the judgment of the superior court granting a writ of prohibition was erroneous and should be reversed with appropriate instructions.

BURKE, J.

I CONCUR:

McCOMB, J. [4]

Order Due
October 16, 1969

ORDER DENYING REHEARING

S. F. No. 22634

In the Supreme Court of the State of California
In Bank

BYERS, Plaintiff and Respondent
v.
JUSTICE COURT FOR THE UKIAH JUDICIAL DISTRICT, ETC., Defendant and Respondent;
THE PEOPLE, Real Party in Interest and Appellant

Petition of Real Party in Interest and Appellant petition for rehearing DENIED.

McComb, J., and Burke, J., are of the opinion that the petition should be granted.

Filed—Oct 15 1969

William I. Sullivan, Clerk
By /s/ K. Hawkes
S. F. Deputy

/s/ Traynor
Chief Justice

Supreme Court of the United States

No. 1070 --- , *October Term, 19* 69

California,

Petitioner,

v.

Jonathan Todd Byers

ON CONSIDERATION of the motion of the respondent for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

April 20, 1970

Supreme Court of the United States

No. 1070, October Term, 19 69

California,

Petitioner,

v.

Jonathan Todd Byers

Order allowing certiorari. Filed April 20, 19 70.

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.